Council Communication

Department: Finance										
C /P : AN	Ordinance No.	00.330	Date:	October 27, 2008						
Case/Project No.	Resolution No.	08-328								
	Subject	/Title								
Subject/Title Authorization of a letter of intent to participate with the State of Iowa in developing an Internet reporting system.										
Background/Discussion The City Finance Committee and Department of Management jointly submit a letter of intent to apply for a grant from the SF 155 Local Government Innovation Fund. The grant application will be used for training, program development, programming, and implementation costs.										
SF155 created a local government innovation fund to stimulate and encourage innovation in local government by providing moneys for grants to assist with the implementation of local governance and revenue models.										
To qualify for the funding, several cities must jointly cooperate to form a community wide area. A letter of intent was filed proposing moving the annual city budget and any amendments, the annual financial report and the annual street financial report to a web-based application.										
The most significant benefits of the proposal include, but are not limited to, being able to utilize a single portal to access the various reporting requirements, having a common look and feel to the various applications and the ability to have numerous data fields pre-filled.										
This action does require Council approval and a resolution authorizing the letter of intent was prepared.										
Recommendation Council approval of the resolution authorizing the execution of the Letter of Intent by the Mayor.										
Department Head Signature Mayor Signature										

RESOLUTION NO. 08-328

WHEREAS, the State of Iowa City Finance Committee has determined a need for a statewide Internet reporting system for cities; and

WHEREAS, SF 155 created a local government innovation fund to stimulate and encourage local government by providing moneys for grants to assist in the implementation of local governance and revenue models; and

WHEREAS, the City Finance Committee and Department of Management have jointly submitted a letter of intent to the Local Government Innovation Fund proposing an Internet reporting system for cities; and

WHEREAS, the City Finance Committee must include with its grant application letters of intent from various-sized cities indicating their willingness to participate in the implementation of such a program;

THEREFORE, BE IT RESOLVED that the City of Council Bluffs commits to participate (contingent upon receipt of grant funding) in the planning, design, and testing of a web-based application for reporting is received and hereby authorizes its Mayor to execute and submit its letter of commitment to the City Finance Committee.

		ADOPTED AND		
		APPROVED	October 27, 2008	
		A	Thomas Hanafan, May	or
ATTEST:				
· · · · · · · · · · · · · · · · · · ·	ley, City Clerk	_		

Council Communication October 27, 2008 City Council Meeting

Department:	Ordinance No.: N/A								
Community Development									
	Resolution No.: <u>08-329</u> -		October 27, 2008						
Case/Project No.: N/A									
	Subject/Title								
US EPA Brownfields Cleanup Gra	int Application.								
Location									
South Main Urban Renewal Area.									

Background/Discussion

Background

On June 22, 1998 the City adopted an urban renewal plan for the South Main area. This area includes properties generally bounded by 3rd Street on the east, 16th Avenue on the south, South Expressway on the west and 9th Avenue on the north. The adoption of an urban renewal plan for the area was intended to stimulate the redevelopment of properties through the acquisition of property, demolition of structures, and improvements to public infrastructure. The first phase of these redevelopment activities has been completed with the acquisition and demolition of properties adjacent to the ConAgra Plant. The Pottawattamie County Development Corporation has also acquired several properties in the 800, 1000, and 1100 block of South Main and South 6th Street, removed structures and prepared sites for redevelopment. The City completed reconstruction of South Main, South 7th and South 8th Streets between 9th and 16th Avenues. Portions of 9th Avenue have been reconstructed and all of South Main north of 9th Avenue has been reconstructed as part of the downtown streetscape project. South 6th Streets is in progress of reconstruction between 11th and 16th Avenues.

Discussion

During the process of acquiring some properties, underground water and soil contamination have been discovered in an area roughly bounded by 8th Street on the west, 10th Avenue on the north, South 6th on the east, and 11th Avenue/BNSF RR on the south. Also, recognizing this area was developed and used for industrial purposes, soil and groundwater contamination is suspected in other areas. In order for redevelopment efforts to have long term success, identification and mitigation of these contaminates is necessary. Mitigation activities are also necessary for the City to complete the reconstruction of portions of South 7th Street.

The U.S. Environmental Protection Agency (EPA) has established a Brownfields Assessment Grant Program. This Program provides local communities with up to \$400,000 to inventory, characterize, assess and conduct planning and community involvement and \$600,000 to perform cleanup activities related to brownfield sites. No matching funds are required. In 2005 the City was successful in receiving \$400,000 and in 2008 another \$400,000 in EPA Brownfields Assessment Grant funds to inventory, assess, and characterize environmental contaminates within the South Main Urban Renewal area. To date, Phase I Environmental Site Assessments have been completed on 26 properties and Phase II Environmental Site Assessments have been completed on 17 properties in the South Main Urban Renewal area. An additional 23 properties have been identified. Additional funds are being sought to assist with the remediation of property located at 1001 South 6th Street. An informational public hearing on the applications was held on October 23rd at Community Hall. This meeting was held to inform property owners and other interested parties about the EPA Brownfield Program application and the activities contemplated by the grant if awarded.

Staff Recommendation

The Community Development Department recommends City Council adopt a resolution authorizing the Mayor to submit an US EPA Brownfields Cleanup Grant application for 1001 South 6th Street for the South Main area.

Attachments
None.



RESOLUTION NO. 08-329

A RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT AN US EPA BROWNFIELDS CLEANUP GRANT FOR 1001 SOUTH 6^{TH} STREET FOR THE SOUTH MAIN AREA.

- WHEREAS, the City has established a South Main urban Renewal Plan which is generally bounded by 3rd Street on the East, 16th Avenue on the South, South Expressway on the West and 9th Avenue on the North; and
- WHEREAS the adoption of this area was intended to cause the redevelopment of this area; and
- WHEREAS the City and others have initiated redevelopment activities which has involved the acquisition of property, demolition of structures and public facility improvements; and
- WHEREAS these activities have resulted in the discovery of underground soil and groundwater contamination and the amount of level of contamination needs to be determined to effectively proceed with the redevelopment of this area; and
- WHEREAS, the US EPA Brownfields Cleanup Grant program is a source of funding to remediate existing contaminants; and
- WHEREAS, an application for said funds is in the best interest of the City; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized and directed to submit an US EPA Brownfields Cleanup Grant for 1001 South 6th Street for the South Main area.

ADOPTED AND		
APPROVEI	D: October 27, 2008	
	Thomas P. Hanafan	Mayor
ATTEST:		
	Judith H. Ridgeley	City Clerk

Council Communication October 27, 2008 City Council Meeting

Department:
Community Development

Resolution No.: 08-330

Date: October 27, 2008

Case/Project No.: N/A

Subject/Title

Assignment of Mortgage from Artspace Projects, Inc.

Background/Discussion

Background

The City of Council Bluffs has been approached by Artspace Projects, Inc. to accept the assignment of a \$456,000 mortgage for the redevelopment of 1000 South Main Street. This money has been granted from the Iowa West Foundation to Artspace Projects, Inc. Artspace Projects, Inc. will in turn immediately loan the money to Harvester Artist Lofts, L.P. to help cover the project's costs.

Discussion

More than half of the project's financing will come from an equity investment that a limited partner investor plans to make. This investor will be the entity that is eligible to receive the tax benefits from the low-income housing tax credits and the tax losses from depreciation deductions. These tax benefits are dependent not only upon the equity investment made by the investor, but also upon the debt that finances the project and whether a lender is a related party to a partner. The risk to the investor is that their depreciation deductions may begin to "relate" to the \$456,000 loan mentioned above with the involvement of Artspace Projects, Inc. In order to alleviate this risk, the \$456,000 loan can be assigned to the City and still allow the investor to realize the full allowable benefits. The City will not incur any costs in accepting this assignment.

Staff Recommendation

The Community Development Department recommends approval of the assignment of the \$456,000 mortgage from Artspace Projects, Inc.

Attachments

- 1) Harvester Artist Lofts Legal Opinion
- 2) Promissory Note
- 3) Mortgage
- 4) Endorsement to Promissory Note
- 5) Mortgage Assignment

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department Approved by: Donald D. Gross, Director, Community Development Department

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pment Department

RESOLUTION NO. 08-330

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS ACCEPTING ASSIGNMENT OF A \$456,000 MORTGAGE FROM ARTSPACE PROJECTS, INC. AND AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS.

- WHEREAS, Artspace Projects, Inc. will renovate the International Harvester building located at 1000 South Main Street; and
- WHEREAS, Assisting with this project will be the limited partnership, Harvester Artist Lofts, L.P.; and
- WHEREAS, For tax purposes, Artspace Projects, Inc. has asked the City to accept assignment of a \$456,000 mortgage made to the limited partner; and
- WHEREAS, Approval of this assignment is contingent upon the City not incurring any costs associated with this mortgage; and
- **WHEREAS**, After review and consideration of the request, the City Council has determined that this mortgage assignment is in the best interest of the City and will enable the project to proceed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA

The City accepts the assignment of mortgage from Artspace Projects, Inc. and that the Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution, including executing all related documents to the assignment of this \$456,000 mortgage.

4 D O DODD

ADOPTED AND APPROVED	: October 27, 2008	
	Thomas P. Hanafan	Mayor
ATTEST:	Judith H. Ridgeley	City Clerk



ATTORNEYS AND COUNSELORS AT LAW

October 6, 2008

Paul W. Markwardt Direct Dial: (612) 604-6643 Direct Fax: (612) 604-6843 pmarkwardt@winthrop.com

Ms. Heidi Kurtze Mr. Andrew Michaelson Artspace Projects, Inc. 250 Third Avenue North; Suite 500 Minneapolis, Minnesota 55401

RE: Harvester Artist Lofts – Loan Assignment

Dear Heidi and Andrew:

You asked me to summarize the reason that Artspace Projects, Inc. ("Artspace") has asked the City of Council Bluffs (the "City") to be able to assign to the City a loan in the amount of \$456,000 (the "Loan") that Artspace will make to Harvester Artist Lofts, L.P. (the "Partnership"). Artspace would like to assign the Loan to the City immediately following Artspace's making it.

The Partnership plans to develop an affordable housing project to be located in the City (the "Project"). More than one-half of the Partnership's financing for the Project will come from the equity investment that a limited partner investor (the "Investor") plans to make. The Investor will invest to receive expected tax benefits from both federal low-income housing credits and tax losses from depreciation deductions with respect to the Project.

In general, the ability of an investor to receive these tax benefits frequently depends on not only the equity investment that the investor makes but also the debt that also finances the development of a project and whether a lender is a related party to a partner. At some point in time during a partnership's ownership of a debt-financed project, the federal income tax rules will begin to treat the depreciation deductions as relating to one or more of the partnership's loans. If the lender of such loan is unrelated to any of the partners, then the depreciation deductions may be allocated to all partners in the proportions to which the partners have agreed. In contrast, if the lender is related to a partner, then the depreciation deductions may be allocated only to that partner and to the exclusion of all other partners.

The Investor's projections currently show a risk that, during the Investor's expected investment term, the Partnership's depreciation deductions may begin to relate to the Loan. If it did occur and if Artspace continued to be the lender of the Loan, all of the depreciation deductions would be allocated to Artspace rather than predominantly to the Investor as is desired. To support the full amount of the investment that the Partnership needs the Investor to

make for the benefit of the Project, the risk of this possible reallocation of depreciation deductions from the Investor to Artspace must be addressed. Artspace's immediate assignment of the Loan to the City will address the risk.

If you or the City have any further questions, please contact me.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Yane W. Markwardt

Paul W. Markwardt

4069811v1 File No. 4886-51

DRAFT: 10/06/08

MORTGAGE

(Open-End)
THE IOWA STATE BAR ASSOCIATION
Official Form No. 127
Recorder's Cover Sheet

Preparer Information: (name, address and phone number)

Paul W. Markwardt Winthrop & Weinstine, P.A. Suite 3500225 South Sixth Street Minneapolis, Minnesota 55402

Taxpayer Information: (name and complete address)

Harvester Artist Lofts L.P. 250 Third Avenue North Suite 500 Minneapolis, Minnesota 55401

Return Document To: (name and complete address)

Paul W. Markwardt Winthrop & Weinstine, P.A. Suite 3500 225 South Sixth Street Minneapolis, Minnesota 55402

Grantor:

Harvester Artist Lofts L.P. 250 Third Avenue North Suite 500 Minneapolis, Minnesota 55401

Grantee:

Artspace Projects, Inc. 250 Third Avenue North Suite 500 Minneapolis, Minnesota 55401

Legal Description:	See Exhibit A
Document or instru	ment number of previously recorded documents:

MORTGAGE (Open-End)

THIS MORTGAGE ("Mortgage") encumbers both real and personal property, contains an after-acquired property clause, and secures present and future loans and advances.

NOTICE: This Mortgage secures credit in the amount of Four Hundred Fifty-six Thousand and No/100 Dollars (\$456,000.00). Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

[X] If this box is checked, this Mortgage also constitutes a Construction Mortgage as defined in the Iowa Code.

[] If this box is checked, this Mortgage is a Purchase Money Mortgage as defined in the Iowa Code.

THIS MORTGAGE is made between Harvester Artist Lofts, L.P., an Iowa limited partnership ("Mortgagor"), and Artspace Projects, Inc., a Minnesota nonprofit corporation ("Mortgagee").

- 1. **Grant of Mortgage and Security Interest.** Mortgagor sells, conveys, and mortgages unto Mortgagee, and grants a security interest to Mortgagee, in the following described property:
 - a. **Land and Buildings.** All of Mortgagor's right, title, and interest in and to the following described real estate situated in Pottawattamie County, Iowa (the "Land"):

See Exhibit A

and all buildings, structures, and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys, and roads adjoining the land, estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

- b. **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of, the Land or Buildings, whether attached or detached, including, but not limited to, light fixtures, shades, rods, blinds, Venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment, and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements, and substitutes of, to, and for the foregoing (the "Personal Property").
- c. **Revenues and Income.** All rents, issues, profits, leases, condemnation awards, and insurance proceeds now or hereafter arising from the ownership, occupancy, or use of the Land, Buildings, and Personal Property, or any part thereof (the "Revenues and Income").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property, and Revenues and Income (collectively, the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

- 2. **Obligations.** This Mortgage secures (collectively, the "Obligations") the payment of the loan made by Mortgagee to Mortgagor evidenced by a promissory note dated October __, 2008, in the principal amount of Four Hundred Fifty-six Thousand and No/100 Dollars (\$456,000.00) with a due date of ______, 20__, any renewals, extensions, modifications or refinancing thereof, and any promissory notes issued in substitution therefor (collectively, as to the original promissory note and any promissory notes issued in substitution therefor, the "Note"). THIS PARAGRAPH SHALL NOT CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL LOANS IN ANY AMOUNT.
- 3. Representations and Warranties of Mortgagor. Mortgagor represents, warrants, and covenants to Mortgagee that (i) Mortgagor holds clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagor has the right, power, and authority to execute this Mortgage and to mortgage and grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances, except for real estate taxes not yet delinquent and except as otherwise set forth on the attached Exhibit B; (iv) Mortgagor will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (v) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.
- 4. **Payment and Performance of the Obligations.** Mortgagor will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagor under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth in this Mortgage.
- 5. Taxes. Mortgagor shall pay each installment of all taxes and special assessments of every kind now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.
- 6. **Liens.** Mortgagor shall not create, incur, or suffer to exist any lien, encumbrance, security interest, or charge on the Mortgaged Property or any part thereof that might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.
- 7. **Compliance with Laws.** Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations, and ordinances affecting the Mortgaged Property, any part thereof, or the use thereof.

- 8. **Permitted Contests.** Mortgagor shall not be required to (i) pay any tax, assessment, or other charge referred to in paragraph 5, (ii) discharge or remove any lien, encumbrance, or charge referred to in paragraph 6, or (iii) comply with any statute, law, rule, regulation, or ordinance referred to in paragraph 7, so long as Mortgagor shall contest, in good faith, the existence, amount, or the validity thereof, the amount of damages caused thereby, or the extent of Mortgagor's liability therefor, by appropriate proceedings that shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the tax, assessment, charge, lien, encumbrance, or charge so contested, (B) the sale, forfeiture, or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.
- 9. Care of Property. Mortgagor shall take good care of the Mortgaged Property, shall keep the Buildings and Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair, and shall not injure, destroy, or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagor shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

10. Insurance.

- a. **Risks to be Insured.** Mortgagor, at its sole cost and expense, shall maintain insurance as follows:
 - i. During the period of construction, Mortgagor will maintain builder's risk insurance, written on the so-called "builder's risk-completed value basis," in an amount equal to one hundred percent (100%) of the insurable value of the Mortgaged Property at the date of completion and with coverage available on the so-called "all risk," nonreporting form of policy; provided, however, to the extent that any contractor for such construction shall provide a duplicate insurance policy or builder's risk policy or certificate of insurance showing that the same coverage as is required in this Mortgage is being carried by such contractor and adequately protects the interest of Mortgagee and Mortgagor with respect to the Mortgaged Property or a part thereof, Mortgagee shall not be required to maintain separate coverage. Mortgagee's interest shall be protected in accordance with a standard mortgagee clause.
 - ii. During the period of construction, Mortgagor will maintain comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, complete operations and contractual liability insurance) against bodily injury and property damage in amounts satisfactory to Mortgagee. Upon completion of construction, Mortgagor will maintain comprehensive general public liability insurance and property damage liability insurance in amounts satisfactory to Mortgagee to protect Mortgagor from claims (including all costs and expenses of defending the same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of use thereof) occurring in, on or about the Mortgaged Property.

- iii. Upon completion of construction, Mortgagor will maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require, such insurance to have a "Replacement Cost" endorsement attached thereto, with the amount of the insurance at least equal to the balance of the Obligations. At Mortgagor's option, such policy may have a coinsurance clause of not less than 90% of replacement cost provided the policy contains an appropriate form of cost escalation endorsement. At any time at the request of Mortgagee, Mortgagor will provide Mortgagee with evidence satisfactory to Mortgagee of the replacement cost of Mortgaged Property.
- b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagor pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Mortgagee, be payable to the parties as their interest may appear, contain a standard or union-type loss payable clause in favor of Mortgagee, contain an agreement of the insurer that it will not amend, modify, or cancel the policy except after thirty (30) days prior written notice to Mortgagee, and be reasonably satisfactory to Mortgagee in all other respects.
- c. **Delivery of Policy or Certificate.** If requested by Mortgagee, Mortgagor will deliver to Mortgagee copies of original policies satisfactory to Mortgagee evidencing the insurance that is required under this Mortgage. Mortgagor promptly shall furnish to Mortgagee all renewal notices for insurance policies and, upon request of Mortgagee, evidence of payment thereof. Mortgagor shall deliver to Mortgagee, prior to, or in connection with the execution of this Mortgage, a certificate of insurance for each initial policy of insurance in form satisfactory to Mortgagee and, at least ten (10) days prior to the expiration date of a required policy, a certificate of insurance for a renewal policy in form satisfactory to Mortgagee.
- d. Assignment of Policy. If the Mortgaged Property is sold at a foreclosure sale or if Mortgagee shall acquire title to the Mortgaged Property, Mortgagee shall have all of the right, title, and interest of Mortgagor in and to any insurance policies required under this Mortgage, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to such sale or acquisition.
- e. Notice of Damage or Destruction: Adjusting Loss. If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagor, within five (5) calendar days after the occurrence of such damage or destruction, will give written notice thereof to the insurance carrier and to Mortgagee and will not adjust any damage or loss that is estimated by Mortgagor in good faith to exceed \$25,000 unless Mortgagee shall have joined in or concurred with such adjustment; but, if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four- (4-) month period or at any time thereafter, Mortgagee alone may make proof of

loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagor irrevocably authorizes, empowers, and appoints Mortgagee as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name, and on behalf, of Mortgagor.

- f. Application of Insurance Proceeds. All sums paid under any insurance policy required by this Mortgage shall be paid to Mortgagee, which, at its option, shall apply the same (after first deducting therefrom Mortgagee's expenses incurred in collecting the same including, but not limited to, reasonable attorney's fees) to the reduction of the Obligations or to the payment of the restoration, repair, replacement, or rebuilding of Mortgaged Property that is damaged or destroyed in such manner as Mortgagee shall determine and secondly to the reduction of the Obligations. Any application of insurance proceeds to principal of the Obligations shall not extend or postpone the due date of the installments payable under the Obligations or change the amount of such installments.
- g. Reimbursement of Mortgagee's Expenses. Mortgagor promptly shall reimburse Mortgagee upon demand for all of Mortgagee's expenses incurred in connection with the collection of the insurance proceeds, including, but not limited to, reasonable attorneys fees, and all such expenses shall be additional amounts secured by this Mortgage.
- 11. **Inspection.** Mortgagee, and its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee, however, shall have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for its benefit, and Mortgagor in no way shall rely or claim reliance thereon.
- Protection of Mortgagee's Security. Subject to the rights of Mortgagor under paragraph 8, if Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced that affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 12 shall become an Obligation of Mortgagor secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee under this Mortgage shall be immediately due and payable by Mortgagor unless Mortgagor and Mortgagee agree in writing to other terms of repayment. Mortgagee, at its option, shall be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions of this Mortgage, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act under this Mortgage, and Mortgagee shall not be liable to Mortgagor for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

- Condemnation. Mortgagor shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and assigns, transfers, and sets over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is authorized to intervene in any such action in the names of Mortgagor, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action, compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to the reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.
- 14. **Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Personal Property and for this purpose the name, address, state of organization, and organization identification number of the debtor is as set forth in paragraph 20 and the name and address of the secured party is as set forth in paragraph 20.
- 15. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Mortgage ("Event of Default"):
 - a. Mortgagor shall default in the due observance or performance of or breach its agreement contained in paragraph 4 or shall default in the due observance or performance of, or breach, any other covenant, condition, or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.
 - b. Mortgagor shall make an assignment for the benefit of its creditors, a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code, or Mortgagor shall seek, consent to, or acquiesce in the appointment of any trustee, receiver, or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within sixty (60) days after the appointment of a trustee, receiver, or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.
 - c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof that is not released, vacated, or fully bonded within sixty (60) days after its entry, issue, or levy.
 - d. An event of default, however defined, shall occur under any other mortgage, assignment, or other security document constituting a lien on the Mortgaged Property or any part thereof.
- 16. Acceleration; Foreclosure. Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee, at its option and after such

notice as may be required by law, may exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

- a. Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.
- b. Mortgagee shall have, and may exercise, with respect to the Personal Property, all the rights and remedies accorded upon default to a secured party under the Iowa Uniform Commercial Code. If notice to Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor at least ten (10) days prior to the date of intended disposition.
- c. Mortgagee may (and is authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and, at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case, at the request of Mortgagee, shall appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent the same as such receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues, and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.
- 17. **Redemption.** It is agreed that, if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statues of the State of Iowa shall be reduced to six (6) months provided that the Mortgagee, in such action, files an election to waive any deficiency judgment against Mortgagor that may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale, such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, 628.15, and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) the real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagor or its successors in interest in such action. If the redemption period is so reduced, Mortgagor or its successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15, and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagor shall be a presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code.

This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

- 18. **Attorneys' Fees.** Mortgagor shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies under this Mortgage, including, but not limited to, reasonable attorneys' fees and legal expenses.
- 19. Forbearance Not a Waiver; Rights and Remedies Cumulative. No delay by Mortgagee in exercising any right or remedy provided in this Mortgage, or otherwise afforded by law or equity, shall be deemed to be a waiver of, or preclude the exercise of, such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed to be effective unless in writing signed by Mortgagee. All such rights and remedies provided for in this Mortgage or which Mortgagee or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate, and cumulative and may be exercised concurrently, independently, or successively in any order whatsoever and as often as the occasion therefor arises.
- 20. **Notices.** All notices required to be given under this Mortgage shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:
 - a. If to Mortgagor, to:

Harvester Artist Lofts, L.P. 250 Third Avenue North Suite 500 Minneapolis, Minnesota 55401

State of Organization: Iowa Organizational Identification Number: 487DLP-000354060

b. If to Mortgagee, to:

Artspace Projects, Inc. 250 Third Avenue North Suite 500 Minneapolis, Minnesota 55401

or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

21. **Severability.** If any portion of this Mortgage, for any reason, shall be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable, and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal, and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

- 22. **Further Assurances.** At any time and from time-to-time until payment in full of the Obligations, Mortgagor, at the request of Mortgagee, promptly will execute and deliver to Mortgagee such additional instruments as may be reasonably required to evidence further the lien of this Mortgage and to protect further the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements, and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional Obligations of Mortgagor secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagor to Mortgagee.
- 23. Successors and Assigns Bound; Number; Gender; Agents; Captions. The rights, covenants, and agreements contained in this Mortgage shall be binding upon and inure to the benefit of the respective legal representatives, successors, and assigns of the parties. Words and phrases contained in this Mortgage, including acknowledgment of this Mortgage, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions of this Mortgage.
- 24. **Governing Law.** This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Iowa.
- 25. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagor acknowledges the receipt of a copy of this Mortgage together with a copy of the Note.
- 26. **Nonrecourse.** The covenant of Mortgagor to pay the Obligations is included in the Note and this Mortgage for the purpose of establishing and continuing the existence of such indebtedness. It, however, is a condition of the covenant that, in the event of default under the terms of the Note or this Mortgage, neither Mortgagee nor its assigns will take any action against Mortgagor, its partners, or their respective officers, managers, directors, governors, or other authorized persons, in the absence of fraud in the application of the proceeds of such indebtedness, except as may be necessary to subject to the satisfaction of such indebtedness the Mortgaged Property.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.]

4072140v1 File No. 4886-51

0000

Dated: October, 2008.		
	MORTGAGOR:	
	HARVESTER ARTIST LOFTS, L.P., an Iowa limited partnership	
	By: Artspace Harvester Artist Lofts, L.L.C 0an Iowa limited liability company, the general partner	7.,
	By:	
STATE OF MINNESOTA)) SS.	
COUNTY OF HENNEPIN)	
[Name], a Manager of Artsp Artist Lofts, L.P., an Iowa I general partner on behalf of s	ment was acknowledged before me on October, 2008, be ace Harvester Artist Lofts, L.L.C., the general partner of Harveste imited partnership, as the free and voluntary act and deed of the ame partnership as a general partner of the partnership, for the use oned, and on oath stated that he was authorized to execute the	er 1e es
	(Signature of Person Taking Acknowledgment)	
	Notorial Stamp or Seal (or other title or rank)	

EXHIBIT A

LEGAL DESCRIPTION

The following described real estate situated in Pottawattamie County, Iowa:

Lot 1 and Lot 2, the North 1.0 foot of Lot 3, the North 91 2/3 feet of Lot 14 and the North 91 2/3 feet of the vacated alley lying between Lot 14 and Lots 1, 2 and the North 1.0 foot of Lot 3, all in Block 10, Riddles Subdivision in Council Bluffs, Pottawattamie County, Iowa.

And

Lot 3 except the North 1.0 foot thereof; all of Lots 4, 5, 6, 7 and Lot 14, except the North 91 2/3 feet, all located in Block 10, Riddles Subdivision, Council Bluffs, Pottawattamie County, Iowa and all of the vacated alley abutted by Lots 3, 4, 5 and 6 on the East and Lots 7 and 14 on the West, except the North 91 2/3 feet of said vacated alley.

And

The East 1/2 of the West 12 foot wide alley lying between Main Street and 6th Street and between 10th and 11th Avenue that adjoins Lots 7 and 14 in Block 10 in Riddles Subdivision, Council Bluffs, Pottawattamie County, Iowa and is bounded on the North by the South right-of-way line of 10th Avenue and on the South by the North right-of-way line of 11th Avenue.

And

The vacated South 8 feet of 10th Avenue right-of-way lying between South Main and South 6th Streets and abutting Lots 1 and 14 and the vacated alley between said Lots 1 and 14, Block 10, Riddles Subdivision in Council Bluffs, Pottawattamie County, Iowa.

EXHIBIT B

PERMITTED ENCUMBRANCES

[TO BE COMPLETED]

DRAFT: 10/06/08

PROMISSORY NOTE

\$456,000.00 Minneapolis, Minnesota
October , 2008

1. FOR VALUE RECEIVED, HARVESTER ARTIST LOFTS, L.P., an Iowa limited partnership (the "Borrower"), promises to pay to the order of ARTSPACE PROJECTS, INC., a Minnesota nonprofit corporation, 250 Third Avenue North, Suite 500, Minneapolis, Minnesota 55401, or its assignee (the "Lender"), the principal sum of FOUR HUNDRED FIFTY-SIX THOUSAND AND 00/100 DOLLARS (\$456,000.00) or such lesser amount that the Lender shall have advanced to the Borrower, in lawful money of the United States, together with interest on the unpaid principal from time-to-time accruing from the date of this Note until the Maturity Date (as defined below) at a rate equal to three and one-half percent (3.50%) per annum, compounded monthly.

2.	The principal	of this	Note,	and	accrued	and	unpaid	interest	thereon,	will	be pa	yable :	in
full on		_, 20	[To n	natur	re cotern	iinoi	isly with	, or sub	sequent t	o, the	other	loans.	.J

- 3. This Note may be prepaid in whole or in part at any time without premium or penalty.
- 4. All payments and prepayments will be applied first to any costs of collection, second to accrued and unpaid interest, and third to principal.
- 5. As used in this Note, the term "Event of Default" will mean and include any one or more of the following events (and following the expiration of any applicable cure periods, including, but not limited to, any applicable cure periods set forth in the Mortgage (as defined below)):
 - (a) the Borrower fails to pay, when due, any amounts required to be paid by the Borrower under this Note;
 - (b) the Borrower fails to observe or perform any covenant, condition, or agreement to be observed or performed by it under this Note or under the Mortgage dated the same date as this Note between the Borrower and the Lender by which certain real property in Council Bluffs, Iowa is conveyed as security for this Note (the "Mortgage");
 - (c) (i) the Borrower files a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future state or federal bankruptcy act or under any similar federal or state law, or is adjudicated a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or is unable to pay its debts generally as they become due; or (ii) if an order for relief under any present or future federal bankruptcy act or similar state or federal law is entered against the Borrower; or (iii) if a petition or an answer requesting or proposing the entry of such order for relief or the adjudication of the Borrower as a debtor or bankrupt or reorganization under any present or future state or federal bankruptcy act or any similar federal or state law is filed in any court and the

petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (iv) if a receiver, trustee or liquidator of the Borrower or of all or substantially all of the assets of the Borrower is appointed in any proceeding brought against the Borrower and discharged within sixty (60) days of such appointment; or (v) if the Borrower consents to or acquiesces in such appointment; or (vi) if any property of the Borrower is levied upon or attached in any proceeding;

- (d) the Borrower is or becomes insolvent (whether in the equity or bankruptcy sense); or
- (e) any representation or warranty made by the Borrower in this Note proves to be untrue or misleading in any material respect, or any statement, certificate, or report furnished under this Note or under any of the foregoing documents by or on behalf of the Borrower proves to be untrue or misleading in any material respect on the date when made or furnished.
- 6. The outstanding principal balance of this Note, and all accrued and unpaid interest thereon, at the option of the Lender, will become immediately due and payable, without notice or demand, upon the occurrence at any time of an Event of Default.
- 7. Upon the sale of the property securing this Note or any part thereof, the Borrower will pay the outstanding principal balance of this Note, and all accrued and unpaid interest thereon, to the extent of the net proceeds from the sale remaining after taking into account all costs and expenses of any kind or nature directly related to such sale and the payment in full of any debt of the Borrower that is secured by a mortgage that has priority over the Mortgage.
- 8. This Note is secured by the Mortgage. All of the terms, covenants, conditions, provisions, and agreements of the Mortgage are made a part of this Note to the same extent, and with the same force and effect, as if they were set forth fully in this Note.
- 9. The Borrower promises to pay all costs of collection, including but not limited to reasonable attorneys' fees, paid or incurred by the Lender on account of collection, whether suit is filed and whether incurred prior to or after entry of judgment.
- 10. All payments due under this Note will be made to the Lender at its principal place of business in Minneapolis, Minnesota or such other place as the holder of this Note shall specify.
- 11. Demand, presentment, protest, and notice of nonpayment and dishonor of this Note are waived.
- 12. This Note will be governed by and construed in accordance with the laws of the State of Iowa without giving effect to the choice of law provisions of the State of Iowa.
- 13. The covenant of the Borrower to pay principal, interest, and other amounts is included in this Note for the purpose of establishing and continuing the existence of such indebtedness. It, however, is a condition of the covenant that, in the event of default under the terms of this Note, neither the Lender nor its assigns will take any action against the Borrower, its partners, or their respective officers, managers, directors, governors, or other authorized persons, in the absence of

fraud in the application of the proceeds of such indebtedness, except as may be necessary to subject to the satisfaction of such indebtedness the property described in the Mortgage.

HARVESTER ARTIST LOFTS, L.P., a Minnesota limited partnership

By: Artspace Harvester Artist Lofts, L.L.C., an Iowa limited liability company, its general partner

Ву:		
•	[Name], a Manager	

4072128v1 File No. 4886-51

Council Communication

Department: Legal							
Case/Project No.	Ordinance No. Resolution No.	<u>08-331</u>	Date: October 27, 2008				
Applicant							
	SUBJEC	T/TITLE					
A resolution of intent to dispose (SIRE) for the placement of a nat by the City of Council Bluffs.							
	D. CIZO	DOLLAND	1911				
	BACKG	ROUND					
The City recently acquired a utility corridor to provide services to property on the eastern side of Interstate 29. SIRE cooperated in this effort by granting easements across its property to the City at no cost. SIRE requested that when we acquired property and easements on the eastern side of the interstate that we acquire sufficient property interests to accommodate their need to have a gas pipeline installed in the same general area, with the understanding that SIRE would reimburse the City for any costs associated with the additional property needs. This cost is \$14,280, and SIRE has agreed to pay this amount as the consideration for the granting of this easement.							
	Recommo	endation					
Recommendation It is my recommendation that this resolution be approved.							
Richard Wade Department Head Signature		Mayor Signature					

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503 RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

RESOLUTION NO. 08-331

A RESOLUTION OF INTENT TO DISPOSE OF CERTAIN CITY PROPERTY BY GRANTING A TWENTY FOOT WIDE EASEMENT TO SOUTHWEST IOWA RENEWABLE ENERGY FOR THE PLACEMENT OF A NATURAL GAS PIPELINE.

WHEREAS, the City hereby expresses its intent to dispose of certain property identified on Exhibits A and B, attached hereto, by means of granting an easement to Southwest Iowa Renewable Energy, for the placement of a natural gas pipeline; and

WHEREAS, it is in the best interest of the City to grant said easement to Southwest Iowa Renewable Energy for the sum of \$14,280.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That said matter be set for public hearing on November 10th, 2008.

ADOPTED AND APPROVED October 27, 2008

	Thomas P. Hanafan, Mayor	-
ATTEST:		
	Judith Ridgeley, City Clerk	

Council Communication

Department: mayor			
	Ordinance No.		
Case/Project No.	Resolution No.	<u>08-332</u>	Date: October 27, 2008
Applicant. Inky Westfall			
Applicant. mary 11 octain			
	Subjec	t/Title	
AGREEMENT OF FRIEN	•		aghdad, Iraq, and the City of
	Council Blu	·	
		-	
	Background		
A RESOLUTION AUTHORIZ			
FRIENDSHIP BETWEEN THE	ECITY OF COUNC	CIL BLUFFS, IO	WA, AND THE PROVINCE
OF KARADAH, BAGHDAD, I	RAQ.		
DI.	Recomme	endation	
Please approve.			
Department Head Signature		Mayor Signature	

6I

PREPARED BY: City Legal Department, 209 Pearl Street, Council Bluffs, IA 51503 RETURN TO: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503

RESOLUTION NO. 08-332

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT OF FRIENDSHIP BETWEEN THE CITY OF COUNCIL BLUFFS, IOWA, AND THE PROVINCE OF KARADAH, BAGHDAD, IRAQ.

WHEREAS, the cities of Council Bluffs and Karadah wish to enter into an agreement to foster goodwill between the two cities; and

WHEREAS, it is in the best interest of the City of Council Bluffs to enter into an Agreement of Friendship with this city in Iraq.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized and directed to sign the Agreement of Friendship between Council Bluffs and Karadah Province, Baghdad, Iraq.

AND
APPROVED October 27, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

ADOPTED

AGREEMENT OF FRIENDSHIP

Whereas, to the people of Karadah, Baghdad, Iraq, the City of Council Bluffs, Iowa, agrees to promote and carry out projects of interest to help the people of Karadah establish their own governing bodies, learning better ideas of progressing their city and enabling them to become more proficient in medical and dental programs to the benefit of their citizens; and

Whereas, these ideas are based on mutual benefit and equality between the two parties.

Now, therefore, this Agreement should form a relationship of mutual trust between the two entities.

In recognition of the need to diminish differences between people of all lands, we do sign this Agreement of Friendship.

The foregoing instrument is acknowled	dged before us, on behalf of our two communities
on this 27th day of October 2008, in th	ne City of Council Bluffs, lowa by Thomas P.
Hanafan, Mayor (U.S. City) and	(Official) for the City
of Karadah Province, Baghdad, Iraq.	
OFFICIAL FOR COUNCIL BLUFFS, IOWA	OFFICIAL FOR KARADAH PROVINCE, BAGHDAD, IRAQ
Thomas P. Hanafan, Mayor	Signature
October 27, 2008	Date

Council Communication

Department: Parks, Recreation	Ordinance No.			
and Public Property	Resolution No.	08-333	Date:	October 27, 2008
Case/Project No. n/a		<u> </u>		
Applicant: Larry N. Foster				

Subject/Title

For City Council consideration is a resolution authorizing the Mayor to enter into an agreement with Genus [landscape architects] p.c., for professional services related to the design, engineering and public bidding elements for the Big Lake Park Rehabilitation Phase I project.

Background/Discussion

Big Lake Park, with its active recreational facilities and its three bodies of water, provides critical public recreation for Council Bluffs residents. Additionally, the park currently serves the community as the northern trailhead for the City's nearly 30 miles of paved recreational trails.

In 2007, an effort was initiated to rehab and expand the park amenities available in Big Lake Park. Genus was retained to develop a Master Park Improvement Plan. In August of 2007, the City Council authorized submittal of a R.E.A.P. grant to the Iowa Department of Natural Resources for improvements to the park. In November of 2007, this grant was approved. Soon following, a grant from the Iowa West Foundation was approved.

The park improvements associated with the services outlined in the attached agreement for the Big Lake Park Rehabilitation – Phase I, reflect those improvements previously approved, by the City, to be submitted in its application for grant funding. Specifically, the proposed facilities focus on improved amenities and public access to the north portion of the park and to areas surrounding Big Lake itself. These are to include an access road and parking upgrades, construction of natural and paved trails, possible erection of an elevated boardwalk and viewing platform, development of lake access opportunities along with signage, benches, bike racks and other similar amenities.

Genus [landscape architects] p.c., located in Des Moines, has significant experience and background in park design and are experienced with Big Lake, having provided prior services to the City during the Master Plan preparation and grant application activities. Genus' sub consultant, HGM Associates Inc., will provide various engineering and survey related services required for the project.

The services to be provided by Genus and its sub consultants, under the specific terms outlined in the attached agreement, include:

- Developing project guidelines and inventory
- Schematic/Design Development
- Preparation of Construction Documents
- Bidding Related Services
- Other Services and Obligations as outlined in the agreement



Funding will be provided by a R.E.A.P. (as detailed in the 2008-2009 C.I.P.	Grant, an Iowa West Grant, and General Obligation bond funds	
The estimated cost of the Big Lake Park Phase I project is \$621,000.00 and the total estimated fees paid Genus for the services as detailed in the proposed agreement is \$48,441.00 with reimbursable estimated to be \$3,000.00 to \$3,500.00.		
to execute an agreement with Genus [land	Recommendation In that has been prepared authorizing the Mayor and City Clerk discape architects] p.c., for professional services related to the ements for the Big Lake Rehabilitation Phase I project.	
Larry N. Foster	Mayor Signature	

RESOLUTION NO. <u>08-333</u>

RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH GENUS (LANDSCAPE ARCHITECT) P.C., FOR PROFESSIONAL SERVICES RELATED TO THE DESIGN, ENGINEERING AND BIDDING ELEMENTS FOR THE BIIG LAKE PARK REHABILITATION PHASE I PROJECT.

WHEREAS, the City Council desires to make improvements to Big Lake Park; and

WHEREAS, an agreement with Genus (landscape architects) p.c., for professional services for the project has been submitted to the City Council for approval; and

WHEREAS, the City Council has been advised and deems approval of said agreement to be in the best interest of the City of Council Bluffs.

BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with Genus [landscape architects] p.c., for professional services for the Big Lake Park Rehabilitation Phase I project.

ADOPTED AND APPROVED October 2	27, 2008
Thomas P. Hanafan	Mayor
Attest:	
Judith Ridgeley	City Clerk



October 14, 2008

Mr. Larry Foster, Director City of Council Bluffs Parks, Recreation and Public Property Department 209 Pearl Street Council Bluffs, Iowa 51503

RE: Professional Services Proposal for Big Lake Park Rehabilitation . Phase I gēnus # 08034

Dear Mr. Foster:

The professional consulting firm of genus is pleased to submit the following professional services proposal to the City of Council Bluffs for consulting services and the development of plans for improvements to Big Lake Park.

This proposal outlines the process, deliverables and fees associated with the project. The scope of services and methodology are based on our current understanding of the project requirements as outlined during our recent meeting and park visit in Council Bluffs.

I look forward to working closely with the City and Key Stakeholders on this important project.

Respectfully submitted,

Brett Douglas, ASLA, CLARB

Principal

325 EAST 5TH STREET DES MOINES, IA 50309

T 515 284 1010 F 515 284 5050

PARTI

The firm of genus, hereinafter referred to as the Consultant, subject to the approval and acceptance of this Proposal by the City of Council Bluffs, hereinafter referred to as the Client, agrees to provide Professional Services to the Client as set forth below:

I. PROJECT NAME & LOCATION

Big Lake Park in Council Bluffs, Iowa, hereinafter referred to as the Project.

II. PROJECT DESCRIPTION

The purpose of this Project is to provide schematic design, design documentation, construction documents, specifications, and construction administration services for natural resource and park improvements associated with the Big Lake Nature Area, per the August 2007 R.E.A.P. Grant Application.

III. ASSUMPTIONS

The following assumptions have been factored into the development of this Proposal and are based on discussions between the Client and Consultant to date:

- a. Base map information will be provided through survey work associated with this project. The site survey scope will be contracted directly between HGM Associates and the City of Council Bluffs.
- b. The Client is anticipating a total project funding of approximately \$621,000. This includes grant money provided by REAP, lowa West Foundation and the City of Council Bluffs.
- c. Project permitting will be lead by HGM Associates and shall be a direct contract between the HGM Associates and the City of Council Bluffs.

IV. BASIC SERVICES

The Consultant shall coordinate the work of all disciplines and maintain ongoing communication with the Client throughout the timeline of the Project.

Task I

Project Guidelines, Site Survey, and Inventory
[August + September 2008]

- a. Initial Meeting with City to Determine Project Guidelines
 - Address development history, current uses, proposed improvements, budget restrictions, project expectations, goals, and project timeline.
- b. Site Survey & Inventory Coordination
 - i. Collect and inventory environmental and cultural influences and permitting/zoning requirements.
 - ii. Complete site survey (boundary, topography, and utilities).Contract between City and HGM Associates.

c. Project Permitting (by Others)

PRODUCTS:

- Digital Site Survey (by Others)
- Scope of work and Plan of work refinement.
- One (1) trip to Council Bluffs for the kick-off meeting.

Task II

Schematic/Design Development [October – November 2008]

The Consultant shall prepare, in coordination with the Client and site survey data, Design Development Plans. The plans shall describe the general location, organization, and character of the proposed site improvements, preliminary horizontal and vertical control, and planting design,

- a. The Consultant shall prepare an updated General Estimate of Probable Cost for proposed site development. These costs will be based on the preliminary quantities and materials of the site development represented on the Design Development plans, as approved by the Client
- b. The Consultant shall coordinate work with other consultants on the Project and lead all scheduled meetings.
- c. Up to Three (3) trips to Council Bluffs for coordination.
 - i. Flagging of trail routes and vegetation for survey work
 - ii. Inventory and design review meeting with Client
 - iii. Final design and cost opinion review with Client.

PRODUCTS:

- · Probable Cost Opinion updated
- Design Development Plan Set for Departmental Reviews
- · Geotechnical Investigation and Report, as needed (by Others)

Task III

Construction Documentation [December - January 2008]

- a. Storm Water Calculations, Pollution Control Plan and NPDES Permit
- b. Site layout, Grading, Planting, Site Preparation, and Detailing.
- c. Construction Document & Specification Review Sets
- d. Approximately 90% complete construction documents for review by City staff.
- e. 95% complete construction documents and opinion of probable cost for review by City staff and commissions, as necessary: Planning & Zoning Commission, City Council and Parks Board.
- f. 100% complete construction document Bid Set (plans and specifications).
- g. 100% complete construction documents in electronic format via CD.

h. Up to Two (2) trips to Council Bluffs for Construction Document Coordination

PRODUCTS:

- Construction document review sets at aforementioned milestones.
- Bidding documents and specifications.

Task IV

Bidding and Negotiation [February-March 2009]

- a. Coordinate and Attend pre-bid conference.
- b. Prepare and release any necessary addenda based on bidder questions.
- c. Attend bid opening. Date TBD.
- d. Assist Client with bid tabulation and, if requested, make recommendations.
- e. One (1) trip to Council Bluffs for Bidding and Negotiation.

V. CONSULTING FEE

For Basic Services provided by the Consultant as described in Section IV, compensation shall be billed on a Lump Sum basis not to exceed Forty Eight Thousand Four Hundred Forty One (\$48,441.00).

BASIC SERVICES	Genus	нсм
Task I: Design Development	\$ 16,100	\$ 6,397
Task II: Project Permitting by HGM Associates.	NIC	NIC
Task III: Construction Documents	\$ 13,800	\$10,140
Task IV: Bidding and Negotiation	\$ 1,250	\$ 754
Subtotal of basic services	\$ 31,150	\$17,291
BASIC SERVICES	\$ 48,441	
TOTAL ESTIMATED REIMBURSABLES	\$ 3,000 – 3,500	

b. Reimbursable expenses are in addition to the Basic Services Fee Schedule. Printing, plotting, copying, photography, special equipment rental, or rental or purchases, long distance telephone calls, shipping and deliveries, survey related materials and products, travel and related expenses shall be billed at cost.

VI. ADDITIONAL SERVICES

If services are authorized by the Owner which exceed those listed under Basic Services and are not customarily furnished in accordance with accepted practice, they shall be compensated at the rates listed below:

Such additional expenses shall include, but not be limited to: 1) major revisions in drawings due to causes beyond the control of the Consultant, including all significant changes to the Design and drawings resulting from meetings with local and State agencies and review boards, or revisions requested by the Owner after approval of the Consultant's plans by the Owner, and submission to the governing authority; 2) preparation of record as-built documents, or environmental construction monitoring or certifications; 3) topographic survey other than the scope indicated; 4) geotechnical and environmental services or borings and test pits and soil and compaction testing 5) attendance at meetings beyond those listed in Basic Services; 6) any filings or presentations with local boards other than Parks and Recreation, Planning and Zoning, or City Council. 7) any filings with federal or State agencies, Corps of Engineers, beyond those listed in Basic Services.

I. Hourly Rate Schedule for gēnus:

Principal	\$ 110.00/hr
Project Landscape Architect	\$ 80.00/hr
Associate Landscape Architect II	\$ 70.00/hr
Associate Landscape Architect I	\$ 60.00/hr
Intern Landscape Architect	\$ 50.00/hr
Clerical	\$ 45.00/hr

II. Hourly Rate Schedule for HGM Associates:

\$ 118.00/hr
\$ 87.00/hr
\$ 60.00/hr
\$ 62.00/hr
\$ 54.00/hr
\$ \$ \$

VII. EXCLUSIONS TO BASIC SERVICES

The Consultant assumes no responsibility for the accuracy of information or services supplied by the Client, the Client's representative or an outside consultant not developed specifically for this Project and shall not be liable for errors or omissions therein. Should the Consultant be required to provide services due to errors or omissions, such services shall be billed as additional services.

IIX. PROFESSIONAL SERVICES FOR CONSTRUCTION ADMINISTRATION

Following the completion of Basic Services, the Consultant and the Owner through its representative, the Director of Parks, Recreation and Public Property, shall enter into negotiations pertaining to the Consultant providing professional services for Construction Administration for the Big lake Park

ATTEST:

Rehabilitation Phase I and should such negotiations be successful, the Mayor is hereby authorized to approve this additional scope and fee.

IX. SCHEDULE

The Consultant shall complete the Scope of Services in a timely manner and will coordinate scheduling with the Client as necessary to provide responsive service. It is anticipated that design development will take place in the months of October and November of 2008.

X. PROFESSIONAL SERVICES FOR BIG LAKE PARK REHABILITATION. PHASE II

The Owner and Consultant mutually recognize that continuing the Consultant's professional design/engineering services for the Big Lake Park Rehabilitation Phase I into the Phase II Rehabilitation for Big Lake Park may be mutually advantageous. Therefore, the Parties agree that;

1. Should funding be acquired for Phase II of the Big Lake Park Rehabilitation prior to January 1, 2010, and should the services provided by the Consultant for Phase I of the Big Lake Rehabilitation be judged acceptable by the Owner's Representative, the Director of Parks, Recreation and Public Property, the Consultant and the Director shall enter into negotiations pertaining to a Scope of Work and fees to be associated with this Phase II Rehabilitation project. Should such negotiations result, in a mutually acceptable scope and fee, the Parties will author a new Professional Agreement for this Phase II consultant services which shall be submitted to the City Council for review and action. Should such negotiations fail to result in an acceptable scope and fee, the City shall be immediately free to select another consultant for the Phase II project.

XI. PAYMENT

All work shall be billed on a lump sum basis not to exceed the maximum amount specified. Fees, including reimbursable expenses, are due and payable in full within 30-days of the invoice date.

XII. AGREEMENT

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Signatures below by the Client and Consultant shall constitute acknowledgement and acceptance of Part I and Part II of the Agreement. Without signatures, this Proposal expires in 30-days from the date of issue.

Proft- Down las	10.14.08
gēnus [landscape architects] p.c.	Date
Mr. Tom Hanafan, Mayor, City of Council Bluffs, Iowa	Date

PART II

The engagement of $g\bar{e}nus$ (the Consultant) by the Client is under the following terms and conditions and is an integral part of the collective Agreement between the Client and the Consultant.

- 1. The fee estimate for the proposed Scope of Services is valid for 30 days from the date of Proposal.
- 2. Payment to the Consultant is the sole responsibility of signatory of this Agreement and is not subject to third party agreements.
- All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. All retainer amounts will be applied to the last invoice. A RETAINER OF <u>\$0.00</u> IS REQUIRED BEFORE SERVICES CAN COMMENCE UNDER THE AGREEMENT.
- 4. Requests for Additional Services and any associated fee adjustment must be authorized in writing before Additional Services can begin.
- 5. Invoices will be rendered monthly and become due upon receipt.
- 6. Invoice payments must be kept current for services to continue. If the Client fails to pay any invoice due to the Consultant within 30 days of the date of invoice, the Consultant may, without waiving any other claim or right against Client, suspend services under this Agreement until the Consultant has been paid in full all amounts due the Consultant and/or any of its Consultants and Subcontractors.
- 7. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor and shall be calculated on the unpaid balance from the due date of the invoice.
- 8. The Consultant shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or negligence of the Consultant.
- 9. The Consultant's services will be performed on behalf of and solely for the benefit and exclusive use of the Client and Client's agents and designees for the limited purposes set forth in the Agreement.
- To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees and subconsultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant

under this Agreement, or the total amount of \$50,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

- Per the Construction Administration section of Part I of this Agreement the 11. Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Consultant shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the Work. If the Client desires more extensive project observation or fulltime project representation, the Client shall request that such services be provided by the Consultant as Additional Services in accordance with the terms of this Agreement. The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. The Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.
- 12. The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.
- 13. All documents including Drawings and Specifications prepared by the Consultant pursuant to the Agreement are instruments of service with respect to the Project. They are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse by the Client or a third person or entity authorized by the Client without written verification or adaptation by the Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to the Consultant; and the Client, shall release, indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from. Any such verification or adaptation will entitle the Consultant to additional compensation at rates to be agreed upon by the Consultant and the third person or entity seeking to reuse said documents.
- 14. In entering into this Agreement, the Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations or statements shall be considered a part of this Agreement or a basis upon which the Client relied in entering into this Agreement. No statements, representations, warranties or understandings, unless contained herein, exist between Client and the Consultant.

- 15. The Consultant agrees to comply with all Federal Equal Opportunity laws, orders and regulations. Without limiting the generality of the foregoing, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of race, creed, color, age, sex, marital status, national origin or disability. In addition, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of sexual orientation. The Consultant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, age, sex, marital status, special disabled veteran or Vietnam era veteran status, national origin, disability or sexual orientation. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertisement; (iii) layoff transfer; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 16. The Client agrees to include gēnus as Consultant for the Project, in all construction signage identifying the project.
- 17. The Consultant and their subconsultants shall be paid Additional Services for work related to disputes and questions arising out of the General Contractor and/or Subcontractors' disputes arising out of the Bidding and Construction process.
- 18. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall be responsible for paying their own costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.
- 19. Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.
- 20. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;

Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant for services rendered and reimbursable costs incurred by the Consultant in connection with this Agreement.

- 21. The Americans with Disabilities Act (ADA) regulations provide that it is a violation of these regulations to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can demonstrate that it is structurally impractical to meet the requirements. The Client understands that the requirements of ADA will be subject to various and possibly contradictory interpretations. The Consultant therefore will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other state, local, and federal regulations as they apply to the project. The Consultant however can not and does not warrant or guarantee that the Client's project will comply with all interpretations of ADA requirements and/or requirements of other federal, state, and local laws, rules, codes, ordinances and regulations as they apply to this project.
- 22. Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.
- The Client understands and agrees that products or materials that are 23. permissible under current codes and ordinances may, at some future date, be banned or limited in use in the construction industry because of presently unknown hazardous and/or defective characteristics. The Client agrees that if any such product or material specified for this Project by the Consultant shall, at any future date be suspected or discovered to be defective or a health or safety hazard, then the Client shall waive all claims as a result thereof against the Consultant. The Client further garees that if the Client directs the Consultant to specify any product or material after the Consultant has informed the Client that such product or material may not be suitable or may embody characteristics that are suspected of causing or may cause the product or material to be considered a hazardous substance in the future, the Client waives all claims as a result thereof against the Consultant and the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities or costs including reasonable attorneys' fees and defense costs, arising in any way from the specification or use of any products or materials which, at any future date, become know or suspected health and safety hazards.

- 24. Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, the Consultant and the Consultant's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.
- 25. The Agreement, including these Terms and Conditions, represents the complete and integrated agreement between the parties; supersedes all prior agreements; may be amended only in writing; in binding upon the parties, their successors, assigns, and legal representatives; and shall be interpreted and governed in accordance with the laws of the State of Iowa.

Memo

To: Members of City Council

From: Mayor Tom Hanafan

Date: October 21, 2008

Re: Appointments for Oct 27, 2008 Council Meeting

With City Council concurrence, I would like to make the following appointments:

Board of Electrical Examiners

Reappoint John McDonald at 20314 Victoria Dr with term expiring on September 1, 2012.

Board of Mechanical Appeals

Reappoint Bud Warren at 453 Forest Dr, with term expiring on September 23, 2011.